

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)
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Closed Captioning and Video)
Description of Video Programming)
)
Implementation of Section 305 of)
the Telecommunications Act of 1996)
)
Video Programming Accessibility)

MM Docket No. 95-176

REPLY COMMENTS OF RADIO-TELEVISION NEWS DIRECTORS ASSOCIATION

The Radio-Television News Directors Association ("RTNDA"), by its attorneys, hereby submits its reply to the comments filed in response to the Notice of Proposed Rulemaking ("Notice"), released in the above-captioned proceeding on January 17, 1997.¹

I. INTRODUCTION

In its initial comments regarding the rules and implementation schedules proposed by the Commission for captioning of video programming, as required by Section 305 of the Telecommunications Act of 1996 ("1996 Act"),² RTNDA

¹ FCC 97-4, released January 17, 1997.

² Pub.L. 104-104, 110 Stat. 56 (1996).

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described the tremendous efforts made by national broadcast networks, cable networks, and local broadcasters toward increasing the availability of news and public affairs programming that is closed captioned. The comments in this proceeding confirm that the overwhelming majority of network news is closed captioned. Both RTNDA and the National Association of Broadcasters ("NAB") have placed in the record survey information indicating that approximately eighty percent of all television stations caption their local news. These efforts have been made voluntarily, without the spur of regulation.

Despite the demonstrated commitment of news organizations to affording disabled Americans access to important information programming, advocates of the deaf and hearing impaired continue to urge the Commission to impose more onerous regulation governing the captioning of news programming than that contemplated for other types of programming. Specifically, a number of commenters in this proceeding recommend that the Commission adopt rules requiring that all news programming be captioned on an expedited schedule, and/or that local news programming be captioned using "real-time" or "live" captioning.

RTNDA submits that the Commission must eschew any suggestion that the rules ultimately governing the provision of closed captioning should prescribe which captioning methodology must be used by news organizations or provide that

local news programming be captioned pursuant to an expedited implementation schedule. The record in this proceeding provides ample evidence of the high cost (particularly relative to local production budgets) and limited availability of real-time captioning services. Moreover, not only would these requirements place an undue burden on most local news organizations, but also they would be tantamount to a mandate that programming decisions be made pursuant to closed captioning regulations, rather than broadcasters' best judgments about the programming needs, interests, and tastes of their local viewers.

**II. THE COMMISSION SHOULD NOT
MANDATE THAT NEWS PROGRAMMING BE
CAPTIONED ON AN EXPEDITED BASIS**

RTNDA concurs with those commenters who support the Commission's tentative conclusion that the Commission should allow programming providers and distributors to decide which programming should be captioned and when, depending on their capabilities and market conditions. Consistent with this general policy, the Commission should dismiss any notion that the agency should adopt an artificially expedited implementation schedule for captioning of news programming.

In the absence of any evidence of a problem, the Commission should avoid adopting regulations that burden both the Commission and regulatees with responsibilities that will not result in benefits to the public. As Pulitzer

Broadcasting Company and other commenters point out, "the available evidence does not suggest that local news programming has lagged behind other categories of programming in the pace at which it is being captioned." Pulitzer Comments at 4. To the contrary, by all indications, local news actually is being captioned at a faster rate than other classes of programming. Therefore, as NAB states, "[s]ince television stations are now focusing their captioning efforts on local news programming -- the programming that would appear to be of the greatest public interest benefit -- there is no need for regulation of their captioning choices." NAB Comments at 6.

RTNDA submits that, for the same reason a multi-year phase-in period for the provision of closed captioning is necessary for entertainment and other types of programming, the Commission must allow a sufficient phase-in period for the captioning of news programming. Local broadcast stations in particular must have the opportunity to absorb increased expenditures over a sufficient period of time so that other station services and functions are not impaired. In light of the overwhelming evidence of significant captioning efforts to date, as Pulitzer aptly states, "the Commission can have a high degree of confidence that market forces will be sufficient to ensure that the captioning of local news is not delayed until the end of the implementation schedule." Pulitzer Comments at 5.

III. THE COMMISSION SHOULD NOT DICTATE THE USE OF PARTICULAR CAPTIONING METHODOLOGIES

It is well documented in this proceeding that high quality real-time captioning is expensive, in short supply, and requires different and more advanced skills than do other types of captioning. RTNDA and other commenters have estimated that any Commission-imposed mandate that local news be captioned using real-time captioning would add an estimated \$100,000 to any local news organization's budget, an increase most could not bear. As a result, many stations would be forced to cut-back on staff, or eliminate local news operations altogether.

Further, any requirement that local news producers use real-time instead of electronic newsroom ("ENR") captioning would set off competition for real-time service and result in some providers being unable to meet their regulatory obligations. Many local broadcasters or regional news networks operate in areas around the country where captioning services, particularly real-time captioning services, are scarce or do not exist. For these programmers, complying with mandatory captioning requirements might be impossible.

While advocates for the hearing impaired express some objection to the ENR system, the ENR system can yield highly-reliable captions for the majority of live, local news content at only a modest cost. Real-time or live captioning entails significantly higher expenditures, both in terms of the

equipment which must be acquired and for the hiring and training of personnel to operate it.

As Pulitzer testifies, while certain non-scripted elements are not captured by the ENR system and thus carry no captions, the content contained in them can also be communicated in other ways or at other times. Weather reports are typically graphic and visual. A late-breaking news report which is broadcast initially without captions can often be communicated to hearing impaired viewers through captions only minutes later, in a recap of the story, after a script has been prepared. Thus, the need for a real-time captioning requirement does not outweigh the significant burdens on local news organizations such a requirement would impose.

IV. THE COMMISSION SHOULD CRAFT ITS RULES SO AS NOT TO HAVE AN IMPACT ON PROGRAM CONTENT

In considering the record in this proceeding, what strikes RTNDA as most troublesome is the potential for closed captioning regulation to become, as the Association of Local Television Stations, Inc. ("ALTV") terms it, "the regulatory tail that wags the programming dog." ALTV Comments at 14. Such a proposal not only clashes headlong with the Commission's stated desire to afford program providers flexibility, but also ignores the Congressional admonition that captioning requirements not dictate programming choices.

In the news context, certain captioning requirements (or, for small stations, any captioning requirement) for local news programming has the potential to dictate the content of that programming. For example, a requirement that imposes significant additional costs upon news organizations may result in staff layoffs, resulting in a loss of reporters to cover particular beats, and a concomitant loss of content concerning these areas. Should the Commission dictate that real-time captioning supplement those portions of a newscast that are not scripted and captioned using the ENR system, and a station fail to procure real-time captioning or be unable to afford such services, the station might be forced to delete live interviews or breaking stories from its newscast based not on the interests or needs of its viewers, but on the station's ability to caption these segments. Similarly, where a station is unable to comply with captioning requirements, nationally syndicated news programs, which typically are captioned at their source and which deal with problems and issues primarily of national, not local, interest could replace locally-produced programs, to the detriment of the viewing public.

Neither Congress nor the Commission wishes to engender this sort of caption-based program decisionmaking, but this result is precisely what the Commission invites by proposing an earlier implementation schedule or dictating a particular captioning methodology for news programming and/or mandating

the captioning of news programming for smaller stations. Moreover, as similarly situated classes of speakers, such as newspaper publishers, are not faced with similar burdens, the discriminatory imposition of this burden on broadcasters and cablecasters, without compelling justification, raises significant constitutional questions. The Commission must craft its rules then, so as not to intrude on the First Amendment rights of electronic journalists.

V. OTHER

RTNDA reiterates the need for a liberal waiver policy with respect to closed captioning requirements for local news broadcasts aired on smaller stations. For many affiliated and independent stations, the costs of even limited amounts of captioning would exceed their annual pre-tax profits. As ALTV's Comments underscore, "[a] more compelling instance of undue economic burden is difficult to imagine." See ALTV Comments at 14.

Finally, RTNDA supports the position, advanced by ABC and NBC, that the Commission should find that a captioning requirement would be economically burdensome with respect to late night news programs that attract relatively few television viewers. See NBC Comments at 8-9, ABC Comments at 15.

VI. CONCLUSION

RTNDA respectfully submits that the Commission should revise its proposed rules governing closed captioning consistent with the proposals advanced herein and in RTNDA's initial comments in this proceeding.

Respectfully submitted,

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March 31, 1997

CERTIFICATE OF SERVICE

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